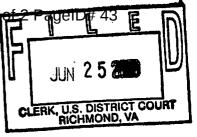
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IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA Richmond Division



DANIEL CURTIS BARNES, II,

Plaintiff,

v.

Civil Action No. 3:07CV195

BASKERVILLE CORRECTIONAL CENTER MEDICAL STAFF, et al.,

Defendants.

MEMORANDUM OPINION

Plaintiff, a Virginia inmate, brings this 42 U.S.C. § 1983 action. The matter is before the Court for evaluation pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A. Jurisdiction is appropriate pursuant to 28 U.S.C. § 1343(a)(3).

This Court must dismiss any action filed by a prisoner if the Court determines the action (1) "is frivolous" or (2) "fails to state a claim on which relief may be granted." 28 U.S.C. § 1915(e)(2); see 28 U.S.C. § 1915A. The first standard includes claims based upon "an indisputably meritless legal theory," or claims where the "factual contentions are clearly baseless." Clay v. Yates, 809 F. Supp. 417, 427 (E.D. Va. 1992) (quoting Neitzke v. Williams, 490 U.S. 319, 327 (1989)). The second standard is the familiar standard for a motion to dismiss under Fed. R. Civ. P. 12(b)(6).

"A motion to dismiss under Rule 12(b)(6) tests the sufficiency of a complaint; importantly, it does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." *Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992) (citing 5A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1356 (1990)). In considering a motion to dismiss for failure to state a claim, a plaintiff's well-pleaded

allegations are taken as true and the complaint is viewed in the light most favorable to the plaintiff. *Mylan Labs., Inc. v. Matkari*, 7 F.3d 1130, 1134 (4th Cir. 1993); see also Martin, 980 F.2d at 952.

In the present complaint, Plaintiff alleges that his rights were violated by Mrs. G. Harris and the Baskerville Correctional Center Medical Staff. In order to state a viable claim under 42 U.S.C. § 1983, a plaintiff must allege that a person acting under color of state law deprived him or her of a constitutional right or of a right conferred by a law of the United States. *See Dowe v. Total Action Against Poverty in Roanoke Valley*, 145 F.3d 653, 658 (4th Cir. 1998). Plaintiff must identify the person or persons who purportedly violated his rights. *See Brownlee v. Williams*, No. 2:07cv0078, 2007 WL 904800, at *2 (D.S.C. Mar. 22, 2007). Thus, Plaintiff's allegations that unspecified prison personnel violated his rights does not adequately state a § 1983 claim. *See id.*; *Ferguson v. Morgan*, No. 1:90cv06318, 1991 WL 115759, at *1 (S.D.N.Y. June 20, 1991) (concluding that the Otisville Correctional Facility Medical Staff is not a person for purposes of § 1983). Accordingly, Plaintiff's claims against the Baskerville Correctional Center Medical Staff will be DISMISSED. The Court will proceed to serve Mrs. G. Harris.

An appropriate Order will accompany this Memorandum Opinion.

Date: 2 5 2008 Richmond, Virginia

Richard L. Williams
United States District Judge